

## Item SP05-03 Response Form

**Title:** **Alternative Dispute Resolution: Preserving Mediation Confidentiality in Rule 1622 Proceedings** (amend Cal. Rules of Court, rules 1580.1 and 1622; adopt rules 1621, 1622.1, 1622.2, and 1622.3; approve form ADR-107; adopt form ADR-108)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

Title	<b>Alternative Dispute Resolution: Preserving Mediation Confidentiality in Rule 1622 Proceedings</b> (amend Cal. Rules of Court, rules 1580.1 and 1622; adopt rules 1621, 1622.1, 1622.2, and 1622.3; approve form ADR-107; adopt form ADR-108)
Summary	<p>The proposed rules and forms would:</p> <ul style="list-style-type: none"> <li>• Establish the confidentiality of proceedings to address complaints against court-program mediators;</li> <li>• Prohibit persons who received, investigated, or resolved such a complaint from subsequently adjudicating the underlying dispute;</li> <li>• Facilitate obtaining mediation participants' agreement to the disclosure of mediation communications in such complaint proceedings by requiring that mediators ask participants in court-program mediations to sign a mediation information and agreement form and an attendance sheet; and</li> <li>• Assist mediators in providing specified information to mediation participants, as required by current rules of court.</li> </ul>
Source	Civil and Small Claims Advisory Committee, Subcommittee on Alternative Dispute Resolution
Staff	Alan Wiener, 818-558-3051, alan.wiener@jud.ca.gov
Discussion	<p><u>Background</u></p> <p>Trial courts throughout California increasingly promote mediation to assist civil litigants in resolving their disputes. Many courts refer or order cases to mediation, maintain panels of mediators, provide lists of mediators to litigants, or refer cases to specific mediators.</p> <p>Mediators are not licensed, certified, or regulated by the State of California. To inform and protect mediation participants and promote public confidence, the Judicial Council has adopted standards of conduct for mediators in court-connected mediation programs and required courts to establish procedures for resolving complaints against these mediators. (Cal. Rules of Court, rule 1620 et seq.) These standards of conduct include requirements that mediators inform mediation participants about specified aspects of the mediation process. (Cal. Rules of Court, rules 1620.3, 1620.4, 1620.5, and 1620.7.) While complaints regarding mediator conduct are infrequent, Rule 1622 requires superior courts that make lists of mediators available to litigants in general civil cases, or that recommend, select, appoint, or compensate mediators, to establish procedures for receiving, investigating, and resolving complaints against these mediators. Rule 1622 also provides that the court may reprimand a mediator, remove a mediator from the court's panel or</p>

list, or otherwise prohibit a mediator from receiving future mediation referrals from the court if the mediator fails to comply with rules 1620–1620.9.

Evidence Code sections 703.5 and 1115–1128 establish the confidentiality of communications, conduct, and writings in connection with a mediation (hereafter collectively referred to as “mediation communications”). In general and in pertinent part, they provide that:

- Statements made and writings prepared for the purpose of, in the course of, or pursuant to a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings in which testimony can be compelled unless all mediation participants expressly agree to their disclosure. (Evid. Code, §§ 1119(a) and (b) and 1122(a)(1).)
- All communications, negotiations, or settlement offers in the course of a mediation shall remain confidential unless all mediation participants expressly agree to their disclosure. (Evid. Code, §§ 1119(c) and 1122(a)(1).)
- No one may submit any kind of mediator report, assessment, evaluation, recommendation, or finding concerning a mediation to a court or other adjudicative body, and a court or adjudicative body may not consider any such report, unless all parties to the mediation expressly agree otherwise in writing. (Evid. Code, § 1121.)
- A mediator is not competent to testify, in any subsequent civil proceeding, about any statement or conduct occurring at or in connection with the mediation. (Evid. Code, § 703.5.)

Some courts have requested guidance regarding how to design a rule 1622 procedure that protects mediation confidentiality. This proposal was developed in response to those requests. It reserves considerable latitude for courts to develop rule 1622 procedures that are appropriate for their particular mediation programs, while establishing several fundamental requirements to protect mediation confidentiality and promote compliance with the confidentiality statutes.

#### Proposed Rules and Forms

This proposal has three basic objectives. The first is to preserve

mediation confidentiality and protect its underlying purposes by establishing the confidentiality of rule 1622 proceedings and prohibiting participants in those proceedings from subsequently adjudicating the underlying dispute. The second is to establish procedures for seeking the written agreement of participants in court mediation programs that mediation communications may be disclosed in any ensuing rule 1622 proceeding since, under the Evidence Code, such an agreement establishes an exception to mediation confidentiality. (See Evid. Code, §§ 1121, 1122(a).) The third is to help mediators fulfill their existing obligation to inform mediation participants about specified aspects of the mediation process.

The texts of the proposed new and amended rules are attached at pages 7–10 and the proposed forms are attached at pages 11–14. Key provisions of the rules and forms are discussed below.

*Establishing the confidentiality of rule 1622 complaint proceedings*

*Rule 1622.1. Designation of person to receive inquiries and complaints*

New rule 1622.1 would require the presiding judge of each superior court that is mandated to establish a rule 1622 complaint procedure to designate a person who is knowledgeable about mediation to receive and investigate any questions, concerns, and complaints about the conduct of mediators subject to rule 1622. By having a single, knowledgeable person responsible for handling any such complaints, the risk of disclosure of confidential information would be reduced.

*Rule 1622.2. Confidentiality of complaint proceedings, information, and records*

New rule 1622.2 would establish the confidentiality of rule 1622 complaint proceedings. Subdivision (a) sets forth the reasons for this confidentiality. The intent of this provision is to help inform any court that may be asked to consider whether the disclosure of information about rule 1622 proceedings should be authorized or ordered.

Subdivision (b) would require that all rule 1622 complaint procedures be designed to preserve the confidentiality of mediation communications, including the any communications between the mediator and individual mediation participants or subgroups of mediation participants (“caucus” communications).

Subdivision (c) would provide that all communications, decisions, information, and records in and about rule 1622 proceedings must occur in private and be kept confidential, and may not be open or disclosed to the public except as provided in (d) or as otherwise required by law.

Subdivision (d) would permit the presiding judge to authorize the disclosure of information or records concerning rule 1622 proceedings that do not reveal any mediation communications.

Subdivision (e) would provide that, in determining whether the disclosure of information or records concerning rule 1622 proceedings is required by law, courts should consider that one purpose of requiring that rule 1622 proceedings be confidential is to protect the confidentiality of mediation communications as required by Evidence Code sections 1115–1128.

A comment to subdivisions (c)–(e) would alert courts and litigants that Evidence Code sections 915 (concerning procedures for ruling on a claim of privilege) and 1040 (concerning the official information privilege) may be applicable or helpful in determining whether the disclosure of information or records concerning rule 1622 proceedings is required by law or should be authorized in the discretion of the presiding judge.

*Rule 1622.3. Disqualification from subsequently serving as an adjudicator*

New rule 1622.3 would prohibit any person who has participated in or received information about the investigation or resolution of a complaint under rule 1622 from subsequently serving in any adjudicative capacity concerning the dispute that was the subject of the mediation or any other dispute that arises from the mediation.

*Seeking participants agreement to disclosure in any 1622 proceeding*

*Rule 1621. Attendance sheet and mediation agreement*

New rule 1621 would require that, in each court-program mediation subject to rule 1620 et seq., the mediator must:

- Complete, sign, and present form ADR-108, *Information and Agreement for Court-program Mediation of Civil Case*, to all participants; retain the agreement for two years; and submit it to

the court on request;

- Request that participants complete one or more attendance sheets indicating their names, addresses, and telephone numbers; retain the attendance sheets for two years; and submit them to the court upon request;
- In the event there is a complaint about the mediator's conduct, agree to the disclosure of mediation communications in a rule 1622 complaint proceeding.

*Form ADR-108. Information and Agreement for Court-Program Mediation of Civil Case*

Form ADR-108 is the form that rule 1621(b) would require mediators to present to participants in court-program mediations. A principal purpose of this requirement and form is to solicit the participants' agreement that mediation communications may be disclosed in any ensuing rule 1622 proceeding, as provided in item 7a. However, the participants' agreement to this provision is optional and would be indicated beside each of their signatures.

*Form ADR-107. Attendance Sheet for Court-program Mediation*

Form ADR-107 is an optional attendance sheet that mediators could use to obtain the participants' names and contact information as required by rule 1621(a). If a rule 1622 proceeding ensued, this form would enable the court to determine whether all participants had agreed that mediation communications could be disclosed and, if not, to seek the consent of any participants who had not yet agreed.

*Informing mediation participants about the mediation process*

Form ADR-108 would also satisfy the mediator's current obligations under the California Rules of Court to:

- Advise participants of the general nature of the mediation process (rule 1620.7(c)(3));
- Inform the participants that any resolution of the dispute in mediation requires a voluntary agreement of the parties (rule 1620.3(a));
- Provide all participants with a general explanation of the procedures to be used in the mediation (rule 1620.7(c)(2));
- Inform all participants that during the mediation the mediator will not represent any participant as a lawyer or perform professional

services in any capacity other than as an impartial mediator (rule 1620.7(d));

- Disclose matters that reasonably may raise a question about the mediator’s ability to conduct the proceedings impartially (rule 1620.5(b));
- Provide the participants with a general explanation of the confidentiality of mediation proceedings (rule 1620.4(b)); and
- Discuss the mediator’s practice regarding confidentiality of separate or “caucus” communications (rule 1620.4(c)).

Other related changes

*Rule 1580.1. Court-related ADR neutrals*

A minor amendment to rule 1580.1 would require that, to be included on a court list of alternative dispute resolution (ADR) neutrals, a neutral must sign a statement or certificate agreeing to comply with all applicable rules of court, as well as with applicable ethics requirements.

*Rule 1622. Complaint procedure required*

An amendment to rule 1622(b) would allow the court to require a mediator who has failed to comply with the standards of conduct established by rule 1620 et seq. to complete additional mediation training. This alternative would be in addition to those currently available to the court: reprimanding the mediator, removing the mediator from the court’s list, or otherwise prohibiting the mediator from receiving future mediation referrals from the court.

Request for Comments

The committee recognizes that requiring mediators to present an attendance sheet and mediation agreement form to participants imposes a burden on mediators and might affect the tone of some court-program mediations. The committee specifically invites comments concerning other, possibly less burdensome, ways of preserving mediation confidentiality when addressing complaints about court-program mediators.

Attachments

Rules 1580.1 and 1622 of the California Rules of Court would be amended, and rules 1621, 1622.1, 1622.2, and 1622.3 would be adopted, effective January 1, 2006, to read:

**Rule 1580.1. Court-related ADR neutrals**

(a) **[Lists of neutrals]** If a court makes a list of ADR neutrals available to litigants, the list shall contain, at a minimum, the following information concerning each neutral listed:

(1) The types of ADR services available from the neutral;

(2) The neutral's résumé, including ADR training and experience; and

(3) The fees charged by the neutral for each type of service.

(b) **[Requirements to be on lists]** In order to be included on a court list of ADR neutrals, an ADR neutral must sign a statement or certificate agreeing to:

(1) ~~Sign a certificate agreeing to~~ Comply with all applicable ethical ethics requirements and rules of court; and

(2) ~~Agree to~~ Serve as an ADR neutral on a pro bono or modest-means basis in at least one case per year, not to exceed eight hours, if requested by the court. The court shall establish the eligibility requirements for litigants to receive and the application process for them to request ADR services on a pro bono or modest-means basis.

**Rule 1621. Attendance sheet and mediation agreement**

In each mediation to which these rules apply under rule 1620.1(a):

(a) The mediator must request that all participants in the mediation complete an attendance sheet stating their names, addresses, and telephone numbers; retain the attendance sheet for at least two years; and submit it to the court on request.

(b) The mediator must complete, sign, and present form ADR-108, *Information and Agreement for Court Program Mediation of Civil Case*, to each participant. Participants are encouraged but not required to sign the form. The mediator must retain the completed form for at least two years after the conclusion of the mediation; and submit it to the court on request.



- 1           (c) The mediator must agree that if an inquiry or a complaint is made about the conduct  
2           of the mediator, mediation communications may be disclosed solely for purposes of  
3           a proceeding conducted pursuant to rule 1622 to address that complaint or inquiry.  
4

5 **Rule 1622. Complaint procedure required**  
6

- 7           (a) Each superior court that makes a list of mediators available to litigants in general  
8           civil cases or that recommends, selects, appoints, or compensates a mediator to  
9           mediate any general civil case pending in the court must establish procedures for  
10          receiving, investigating, and resolving complaints against the mediators who are on  
11          the court's list or who are recommended, selected, appointed, or compensated by the  
12          court.  
13  
14          (b) The court may impose additional mediation training requirements on a mediator,  
15          reprimand a mediator, remove a mediator from the court's panel or list, or otherwise  
16          prohibit a mediator from receiving future mediation referrals from the court if the  
17          mediator fails to comply with the rules of conduct for mediators in this part, when  
18          applicable.  
19

20 *Advisory Committee Comment*

21 Section 16 of the Standards of Judicial Administration sets out recommendations concerning the  
22 procedures that a court should use in receiving, investigating, and resolving complaints against  
23 commissioners and referees and may serve as guidance in adopting procedures for receiving,  
24 investigating, and resolving complaints against mediators.  
25

26 **Rule 1622.1. Designation of person to receive inquiries and complaints**  
27

28 The presiding judge of each superior court that is required to establish a complaint procedure  
29 under rule 1622 must designate a person who is knowledgeable about mediation to receive and  
30 investigate any inquiries or complaints about the conduct of mediators subject to rule 1622.  
31

32 **Rule 1622.2. Confidentiality of complaint proceedings, information, and records**  
33

- 34           (a) This rule's requirement that rule 1622 proceedings be confidential is intended to:  
35  
36                   (1) Preserve the confidentiality of mediation communications as required by  
37                   Evidence Code sections 1115–1128;  
38  
39                   (2) Promote cooperation in the reporting, investigation, and resolution of  
40                   complaints about mediators on court panels; and  
41  
42                   (3) Protect mediators against damage to their reputations that might result from  
43                   unfounded complaints against them.

- 1  
2 (b) All procedures for receiving, investigating, and resolving inquiries or complaints  
3 about the conduct of mediators must be designed to preserve the confidentiality of  
4 mediation communications, including but not limited to the confidentiality of any  
5 communications between the mediator and individual mediation participants or  
6 subgroups of mediation participants.  
7  
8 (c) All communications, inquiries, complaints, investigations, proceedings, deliberations,  
9 and decisions about the conduct of a mediator under rule 1622 must occur in private  
10 and must be kept confidential. No information or records concerning the receipt,  
11 investigation, or resolution of an inquiry or a complaint under rule 1622 may be  
12 open to the public or disclosed outside the course of the rule 1622 proceeding except  
13 as provided in (d) or as otherwise required by law.  
14  
15 (d) The presiding judge or the presiding judge's designee may, in his or her discretion,  
16 authorize the disclosure of information or records concerning rule 1622 proceedings  
17 that do not reveal any mediation communications, including the name of a mediator  
18 against whom action has been taken under rule 1622, the action taken, and the  
19 ground on which the action was taken. In determining whether to authorize the  
20 disclosure of information or records under this subdivision, the presiding judge or  
21 designee should consider the purposes of the confidentiality of rule 1622  
22 proceedings stated in (a)(2) and (a)(3).  
23  
24 (e) In determining whether the disclosure of information or records concerning rule  
25 1622 proceedings is required by law, courts should consider the purposes of the  
26 confidentiality of rule 1622 proceedings stated in (a). Before the disclosure of  
27 information or records concerning proceedings under rule 1622 is ordered, notice  
28 should be given to any persons whose mediation communications may be revealed.  
29

30 *Advisory Committee Comment*

31 See Evidence Code sections 1115 and 1119 concerning the scope and types of mediation  
32 communications protected by mediation confidentiality.  
33

34 Subdivision (b). Private meetings, or "caucuses," between a mediator and subgroups of  
35 participants are common in court-connected mediations, and it is frequently understood that  
36 these communications will not be disclosed to other participants in the mediation. (See Cal.  
37 Rules of Court, rule 1620.4(c).) It is important to protect the confidentiality of these  
38 communications in rule 1622 proceedings, so that one participant in the mediation does not learn  
39 what another participant discussed in confidence with the mediator.  
40

41 Subdivisions (c)–(e). Evidence Code sections 915 and 1040 establish procedures and criteria  
42 for deciding whether information acquired in confidence is subject to disclosure and may be  
43 applicable or helpful in determining whether the disclosure of information or records concerning

1 complaints, investigations, or proceedings under rule 1622 is required by law or should be  
2 authorized in the discretion of the presiding judge.

3  
4 **Rule 1622.3. Disqualification from subsequently serving as an adjudicator**

5  
6 A person who has participated in or received information about the receipt, investigation or  
7 resolution of an inquiry or a complaint under rule 1622 must not subsequently serve as a judge,  
8 an arbitrator, a referee, or a juror, or in any other adjudicative capacity, concerning the dispute  
9 that was the subject of the underlying mediation or any other dispute that arises from the  
10 mediation.

## ATTENDANCE SHEET FOR COURT PROGRAM MEDIATION OF CIVIL CASE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

MEDIATOR:

PLAINTIFF/PETITIONER:

DEFENDANT/RESPONDENT:

CASE NUMBER:

Please provide your name, address, and telephone number so that the mediator or the court may contact you concerning this mediation if the need arises. This information will not be released or used for other purposes. (Multiple attendance sheets may be used to preserve the confidentiality of the participants' contact information.)

(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE AND ZIP CODE)
(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)
(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)
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	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)
(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)
(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)
(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
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(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)
(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)
(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
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	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)
(NAME)	(AREA CODE AND TELEPHONE NUMBER)	(MAILING ADDRESS)
	(ROLE IN MEDIATION)	(CITY, STATE, AND ZIP CODE)

**ATTENDANCE SHEET**  
**FOR COURT-PROGRAM MEDIATION OF CIVIL CASE**  
**(Alternative Dispute Resolution)**

## INFORMATION AND AGREEMENT FOR COURT- PROGRAM MEDIATION OF CIVIL CASE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

MEDIATOR:

PLAINTIFF/PETITIONER:

DEFENDANT/RESPONDENT:

CASE NUMBER:

1. **Agreement.** The parties, mediator, and other participants agree that the mediation in the above-described case will be conducted as provided below.
2. **Nature of the mediation process and roles of the participants.** Mediation is a process in which a neutral person or persons ("the mediator") facilitate communication between the parties to a dispute to help them reach a mutually acceptable agreement.
  - a. **Decision making.** Any resolution of a dispute in mediation requires a voluntary agreement of the parties. The mediator does not decide whether or how the dispute is to be resolved.
  - b. **Mediation procedures.** Mediators use a variety of techniques and procedures to help the parties reach an agreement. These may include joint sessions with all participants and private, or "caucus" sessions between the mediator and individual participants or groups of participants. In these sessions, the participants discuss their views of the dispute and possible resolutions with each other and the mediator. The mediator may sometimes suggest settlement options or terms for discussion or communicate his or her evaluation, opinion, or assessment of the parties' claims, defenses, or positions. However, it remains the parties' responsibility to decide whether and on what terms to settle. If a settlement is reached, the mediator may sometimes help the parties prepare a written settlement agreement.
  - c. **Legal and other professional advice.** During the mediation the mediator will not represent any participant as a lawyer or perform professional services in any capacity other than as an impartial mediator. If any parties are represented by attorneys at the mediation, it is the attorneys' role to provide legal advice to their clients. If any parties are not represented by attorneys at the mediation, they may seek independent advice from lawyers before concluding an agreement.
3. **Mediator impartiality.** The mediator will maintain impartiality toward all participants in the mediation at all times. If the mediator cannot maintain impartiality, he or she will withdraw from the mediation. The mediator will also disclose any matters that reasonably could raise a question about his or her ability to conduct the proceedings impartially and that are now known or that become known to the mediator during the mediation. *(Check a or check and complete b.)*
  - a. ☐ On the date of this agreement, the mediator does not know of any matters that reasonably could raise a question about his or her ability to conduct the mediation impartially.
  - b. ☐ The mediator discloses the following matters, and no party objects to the mediator conducting the mediation for these reasons. *(State the known matters that reasonably may raise a question about the mediator's ability to impartially conduct the proceedings, below or in Attachment 3b.)*
4. **General rule of mediation confidentiality.** To promote communication in mediation, California Evidence Code sections 703.5 and 1115–1128 establish the confidentiality and limit the disclosure, admissibility, and court's consideration of communications, writings, and conduct in connection with a mediation. In general, they provide:
  - a. All communications, negotiations, or settlement offers in the course of a mediation must remain confidential;
  - b. Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings;
  - c. A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body; and
  - d. A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at or in connection with a mediation.
5. **Confidentiality of separate communications.** *(Check and complete a or b.)*
  - a. ☐ The mediator will not communicate about the dispute privately or in caucus with any mediation participant.
  - b. ☐ If the mediator communicates separately or in caucus with one or more participants outside the presence of other participants *(check one)*:
    - (1) ☐ The mediator may disclose any caucus communications to other participants in the mediation.
    - (2) ☐ The mediator may disclose any caucus communications to other participants in the mediation unless a participant in the caucus expressly requests (verbally or in writing) that the communication not be disclosed.
    - (3) ☐ The mediator may not disclose any caucus communications to other participants in the mediation without the express (verbal or written) permission of the caucus participants.

PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT:	CASE NUMBER: _____
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6. **General exceptions to mediation confidentiality.** Mediation communications, writings, and mediator reports may be disclosed if all participants in the mediation agree to this in writing. Mediation communications, conduct, and mediator reports may also be disclosed, discovered, considered, or admitted in evidence, and a mediator may be compelled to testify, in criminal proceedings. In a few cases, courts have determined that mediators were also required to testify about mediation communications or conduct in noncriminal proceedings when the court determined that the reasons for mediation confidentiality were outweighed by constitutional or other important considerations.

7. **Agreed-on exceptions to mediation confidentiality.**

- a. **Rule 1622 proceedings.** Rule 1622 of the California Rules of Court requires courts to have procedures for addressing complaints against mediators who are on their lists or panels or whom they recommend, select, appoint, or compensate. Rules 1622.1 and 1622.2 establish the confidentiality of these complaint procedures. If the mediation participants do not agree that mediation communications may be disclosed in a rule 1622 proceeding, the court's ability to address questions or complaints about the mediator's conduct, and the mediator's ability to respond to questions or complaints, may be limited by the mediation confidentiality statutes.

**The mediators and the participants who sign below indicating their agreement to item 7 agree that, in the event a complaint or inquiry is made about the conduct of the mediator, mediation communications may be disclosed solely for the purpose of enabling the court to investigate or resolve the complaint.**

- b. ☐ **Other agreed-on exceptions.** The participants agree that mediation communications, writings, and conduct also may be disclosed in the following situations (*describe below or in Attachment 7b*):

8. **Mediator compensation.** Mediator's fees, costs, and other charges to the parties

- a. ☐ have previously been disclosed to the parties in writing.  
 b. ☐ are set forth on Attachment 8b.  
 c. ☐ are as follows (*state fees, costs, and other charges*):

9. ☐ **Additional provisions.** The mediator and mediation participants also acknowledge or agree to the additional provisions set forth in Attachment 9. (*If applicable, set forth additional matters in Attachment 9.*)

**THE COURT REQUESTS, BUT DOES NOT REQUIRE, THAT ALL MEDIATION PARTICIPANTS SIGN BELOW, ACKNOWLEDGING THE INFORMATION ABOVE AND AGREEING TO THE DISCLOSURE OF MEDIATION COMMUNICATIONS SET FORTH IN ITEM 7A .**

(TYPE OR PRINT NAME OF PARTICIPANT)	I acknowledge the information above and <input type="checkbox"/> agree <input type="checkbox"/> do not agree to item 7a.	(SIGNATURE)
(TYPE OR PRINT NAME OF PARTICIPANT)	I acknowledge the information above and <input type="checkbox"/> agree <input type="checkbox"/> do not agree to item 7a.	(SIGNATURE)
(TYPE OR PRINT NAME OF PARTICIPANT)	I acknowledge the information above and <input type="checkbox"/> agree <input type="checkbox"/> do not agree to item 7a.	(SIGNATURE)
(TYPE OR PRINT NAME OF PARTICIPANT)	I acknowledge the information above and <input type="checkbox"/> agree <input type="checkbox"/> do not agree to item 7a.	(SIGNATURE)
(TYPE OR PRINT NAME OF PARTICIPANT)	I acknowledge the information above and <input type="checkbox"/> agree <input type="checkbox"/> do not agree to item 7a.	(SIGNATURE)

10. ☐ **Additional signatures.** Additional signatures are attached.

11. **Mediator agreement and statement.** The mediator agrees to the above provisions, including the disclosure of mediation communications set forth in item 7a. The mediator also affirms that he or she has presented this information and agreement form to all participants in the mediation and that (*check one*)

- a. ☐ all participants have signed this form or a signature attachment.  
 b. ☐ not all participants have signed this form or a signature attachment.

Date: \_\_\_\_\_  
 (TYPE OR PRINT NAME OF MEDIATOR) (SIGNATURE OF MEDIATOR)